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Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 124.

THE MEXICAN CENTRAL RAILWAY COMPANY, LIMITED, PLAINTIFF IN ERROR,

v.

J. W. ECKMAN, GUARDIAN OF ALFONSO HUESSELMANN, DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

REPLY BRIEF FOR PLAINTIFF IN ERROR.

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REPLY BRIEF FOR PLAINTIFF IN ERROR.

I.

The questions certified involve the jurisdiction of the circuit court (1) as to parties, and (2) subject-matter. This cannot be objectionable. Section 5 of the judiciary act of March 3, 1891 (25 Statutes, 826), allows such appeal or writ of error "direct" to this court, *inter alia*, "In "any case in which the jurisdiction of the court is in issue; "in such cases the question of jurisdiction alone shall be "certified to the Supreme Court from the court below for "decision."

The jurisdiction may be in issue, as here, on two grounds. It is none the less "the question of jurisdiction," though presented on several distinct grounds. It may be thereon de-

termined to exist because of diverse citizenship and not because of subject-matter, or *vice versa*.

The circuit court assumed jurisdiction and rendered final judgment. This was essential. Without such judgment the writ of error would not lie.

McLish v. Roff, 141 U. S., 661.

II.

The facts whereon the question as to jurisdiction because of *parties* arises are clearly and concisely stated therein (Rec., p. 78), and opposing counsel does not challenge their correctness in argument.

The questions certified in respect of jurisdiction because of subject-matter are stated with equal clearness. Counsel admits recovery was sought under the laws of Mexico (within whose jurisdiction the injuries complained of occurred), and that "by the laws of Mexico * * * the "minor Huesselmann had a right of action against defendant "for his damages" (Brief, p. 3); and so the plaintiff's petition, before setting out at length the laws of Mexico, averred (Rec., p. 66):

"And he says that the following were the laws of Mexico, "and are now the laws of Mexico applicable in this case, "*out of which his said right of action accrued*, and by virtue of "which the same now exists in the said Republic of Mexico, "which said laws the said plaintiff specially pleads in this "action, and hereby makes the same a part of this petition, "viz:"

The circuit court has certified the pleadings, rulings, and exceptions in a few pages (Rec., pp. 63–80), wherefrom the conceded facts appear which underlie the question of jurisdiction as to subject-matter as certified by the court. This certified portion of the record is hence embodied in the inquiries certified on this head. Reference thereto clearly shows precisely upon *what* matters of law the circuit court

desires the instruction of this court. Had the court repeated such matter already in the record in formulating the inquiries submitted upon the question of jurisdiction arising thereunder, the result would be the same. That it did not thus needlessly encumber the record is not matter for objection nor sound criticism.

III.

Counsel err in asserting that the questions of jurisdiction as to subject-matter are "purely abstract and hypothetical" (Brief, p. 3). *Contra*, they are essentially vital and are considered at length and distinctly ruled in the decisions of the circuit court of appeals cited in counsel's brief and whereon he submits this branch of the case. Having planted the primary right of recovery on the laws of Mexico, it is manifest error to now contend that judgment was recovered under American law and wholly without regard to such foreign law.

IV.

Our original brief demonstrates, both on principle and authority, the clear distinction between suits by or against representatives of estates and by or against representatives of individuals. In the former title is vested in such representative, and his citizenship controls in determining the jurisdiction of the Federal courts. In the latter the citizenship of the principal controls. We again commend examination of the authorities cited on our main brief, including *Wilcoxen v. Chicago, B. & Q. R. Co.*, 116 Fed. Rep., 444, wherein the authorities are reviewed and the question clearly reasoned to sound conclusion.

V.

Whether the law of Mexico, whose text is fully pleaded as the ground for recovery here, *is* enforceable in the courts of this country is essentially a jurisdictional question. Such law, when proven as a *fact* and sought to be applied as basis for recovery, raises at once the inquiry whether our courts have *power* to enforce its provisions.

"Jurisdiction is the power to hear and determine the "*subject-matter* in controversy between parties to a suit; to "adjudicate or exercise any judicial power over them."

Rhode Island v. Massachusetts, 12 Pet., 657, 718.

We submit the court below has sufficiently and properly certified the essential parts of the record and the inquiries arising thereon for the determination of that question in this court.

Respectfully submitted.

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Counsel for Plaintiff in Error.

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